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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 372

WILLIAM G. WALL,

Petitioner,

vs.

STATE BOARD OF BAR EXAMINERS OF THE STATE OF
NEW JERSEY,

Respondent.

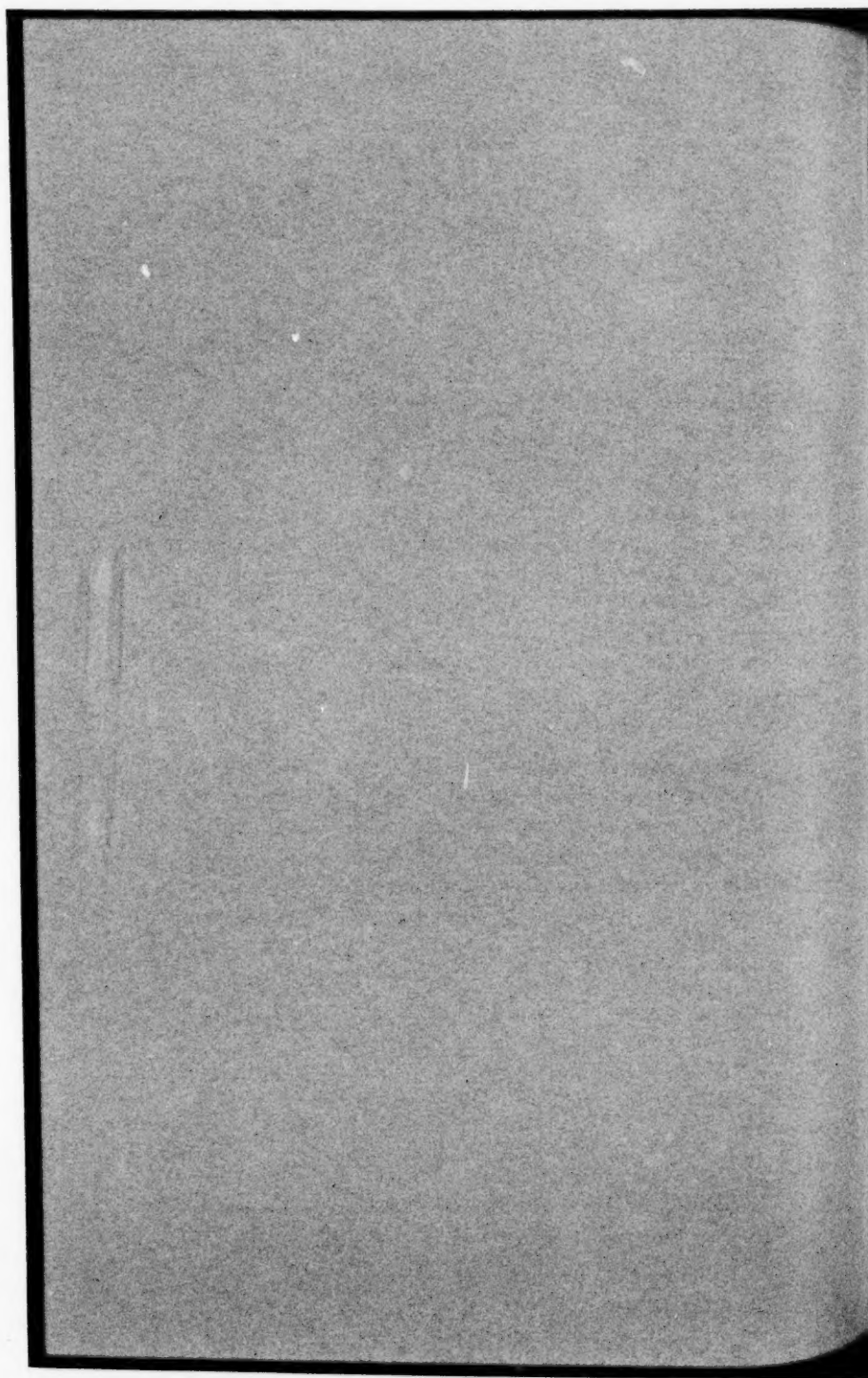
**PETITION FOR WRIT OF CERTIORARI TO THE NEW
JERSEY SUPREME COURT AND BRIEF IN
SUPPORT THEREOF.**

WILLIAM G. WALL,

Attorney in pro. per.,

A member of the Bar of the United
States Supreme Court.

case?



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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE NEW JERSEY
SUPREME COURT.

Summary Statement of Matter Involved.

Petitioner, a member of the Bar of this United States Supreme Court, and an actively engaged, practicing Counsellor at Law of the State of New York since April 1929, although a native born and practically life-long resident of the State of New Jersey, maintaining an office, in the Borough of Manhattan, City and State of New York, seeks a review of the final judgment of the New Jersey Supreme Court and of the New Jersey Court of Errors and Appeals unjustly denying Petitioner relief in connection with the review and remarking of his examination papers on April 1939 New Jersey examination for admission as Attorney in that State, and further exacting from Petitioner the unreasonable requirement that Petitioner serve a four months' clerkship in the law office

of a Counsellor at Law in the State of New Jersey prior to his being allowed to take a re-examination for admission as Attorney in said State. The ruling by the New Jersey Supreme Court requiring Petitioner to now serve a four-months' clerkship before being permitted a re-examination is in direct conflict with, and contrary to, a previous ruling of said New Jersey Court in a case having precisely the same set of facts as those surrounding this Petitioner. These said rulings of the State Courts impose an unreasonable hardship and burden upon Petitioner, deprive him of his certain property rights without due process of law, unjustly discriminate against him and deny him the equal protection of laws, contrary to the provisions of the United States Constitution and that of the State of New Jersey.

This judgment of the New Jersey Supreme Court, dated October 11, 1939, filed October 17, 1939 (R. 50) and the decision of the said Court on Petitioner's motion for re-argument, dated November 17, 1939 and the order entered and filed thereon on January 29, 1940 (R. 51-58) were appealed by Petitioner to the New Jersey Court of Errors and Appeals, which, by its Rule dated April 25, 1940, and filed May 24, 1940, declined to take jurisdiction of this Petitioner's appeal and dismissed same. The holding of the Court of Errors and Appeals is to the effect that, even under the anomalous system of admission of Attorneys and Counsellors in the State of New Jersey, the matter rested solely in the New Jersey Supreme Court (which has absolutely no power to admit Attorneys or Counsellors). The questions raised in Petitioner's appeal to said Court of Errors and Appeals were not therefore passed upon nor were they mentioned, argued or opposed by Respondent Board in its brief before that Court.

Statement of Facts.

Petitioner, a life-long resident of the State of New Jersey (except from December 1927 to May 1929 when he was a resident of New York) and a continuous resident thereof since May 1929 to date, is a licensed Attorney and Counsellor at Law of the New York Bar since April 30, 1929, and admitted to practice in this United States Supreme Court since 1937, applied for admission, under the rules prescribed by the New Jersey Supreme Court for admission as Attorney at Law in that State and took the New Jersey Bar Examination for Attorney on April 13 and 14, 1939. Prior to taking said examination Petitioner complied with all the rules and regulations of said Court and the Respondent New Jersey State Board of Bar Examiners.

In June 1939, Petitioner was advised by the Respondent Board that he failed to pass said examination. In early July 1939 Petitioner conferred with the Chairman of Respondent Board of Bar Examiners. Said the Chairman to Petitioner, concerning Petitioner's examination:

"You are the 'real tragedy' of the examination; yours is a 'twilight zone case'; your mark was such that you could have 'passed' or 'failed', but unfortunately you 'failed' to 'pass'; but you have an 'excellent paper'" (R. 2).

This statement lead Petitioner to believe that he "failed" said examination by a point or fraction thereof under the required 267 points of the possible 400 points on said examination. After carefully rechecking all answers on said examination, and allowing for every possible contingency, Petitioner's minimum rating should be in excess of 300 points. Upon again taking the matter up with the State Board of Bar Examiners, Petitioner was

informed that before he would be permitted to take a re-examination, at the October 1939 term of the New Jersey Supreme Court, he would have to serve a four-months' clerkship in the office of a New Jersey Counsellor at Law.

Petitioner's examination papers are ungraded on their face, and to date Petitioner has yet to be advised of the rating he was given by the Board of Bar Examiners on his said bar examination. All his efforts to obtain his marks have been futile.

Relying on an unreported case in the State of New Jersey (*In re Kraft*) as a precedent (R. 3), (Appendix 3), Petitioner in September 1939, filed a Petition in the New Jersey Supreme Court for a review and a re-marking of his examination papers on the April 1939 bar examination of that State, and in the alternative, if this relief were denied, for an order compelling the Clerk of the New Jersey Supreme Court to add Petitioner's name to the list of those entitled to take the October 1939 New Jersey Bar Examination for Attorney. As heretofore stated the New Jersey Supreme Court denied Petitioner's application in toto, except that it stated that it had reviewed the examination papers of the Petitioner, but had no fault to find with the Respondent Board of Bar Examiners. The New Jersey Supreme Court, contrary to its previous ruling in a case on all fours with Petitioner's (R. 5, 6), insisted, for reasons unknown to Petitioner, that Petitioner must serve a four-months' clerkship prior to taking a re-examination for admission as attorney in that State.

Upon application for reconsideration and re-argument in the matter before the New Jersey Supreme Court (R. 51), Petitioner's application was denied without change in result and without opinion (R. 57). Immediately after re-argument one of the Supreme Court Justices also remarked to Petitioner that Petitioner had an "excellent

paper" on his said examination. Petitioner was likewise unable to get his marks from the Supreme Court.

An order of the New Jersey Supreme Court on the motion for reargument was entered on January 29, 1940 (R. 58). On February 7, 1940, Petitioner appealed these decisions of the New Jersey Supreme Court to the New Jersey Court of Errors and Appeals (R. 59). In a decision dated April 25, 1940, the New Jersey Court of Errors and Appeals denied Petitioner relief, merely holding that it had no jurisdiction in the matter.

Thereafter a personal appeal by Petitioner to the Governor of the State of New Jersey was of no avail. His Excellency, inadvertently overlooking his own powers and unmindful of the fact that the power of the New Jersey Supreme Court regarding admission of Attorneys and Counsellors at Law is purely recommendatory, expressed the opinion to Petitioner that the sole power of admission of Attorneys in that State rested with its Supreme Court.

For years it has been common knowledge that the State of New Jersey is unjustly discriminating against Counsellors from the State of New York. Several eminent, matured and prominent Counsellors of the New York Bar have personally contacted Petitioner since April 1940 and stated that they took but never "passed" the New Jersey Bar Examinations for admission as Attorneys; that any such examination is practically an impasse for a member of the New York Bar, which is being unduly discriminated against; that regarding admission of Counsellors from New York, New Jersey is virtually a "closed corporation".

It is to be noted that in keeping with this stringent policy the New Jersey Legislature passed an Act, effective July 1, 1939 (apparently aimed at Attorneys and Counsellors from the State most proximate to its northern

boundaries) restricting the allowance of fees for legal services in New Jersey to New Jersey practitioners and providing that the allowance of any such fees to Counsel from foreign states must be subject to the allowance by and approval of the New Jersey Courts (New Jersey Public Laws 1939, Chapter 140; Revised Statutes 2:20-9 (Appendix 3)).

The Petitioner, having exhausted his remedies in the Courts of the State of New Jersey now respectfully requests this United States Supreme Court for relief in the premises.

One of the important grounds upon which the application of the Petitioner for a writ of certiorari herein is based is Rule 11 of the New Jersey Supreme Court (Appendix 2), and in particular its application to candidates for admission to the Bar in New Jersey both prior and subsequent to February 14, 1931, as well as its discrimination against foreign attorneys.

On June 28, 1940 this Petitioner made known to the Chief Clerk of the New Jersey Supreme Court, who is also Secretary to the Respondent State Board of Examiners, the fact that the Petitioner intended to apply to the United States Supreme Court for relief in these proceedings, and accordingly requested a certified copy of the entire record.

It is interesting to state here that shortly thereafter, on July 5, 1940, the New Jersey Supreme Court abrogated Rule 11.

Jurisdiction.

The Petitioner says that the Supreme Court of the United States has jurisdiction to review this cause on certiorari because:

1. This petition for certiorari is filed under the provisions of the Act of 1925 c. 229 Sec. 1 (43 Stat. 937

Judicial Code, Sec. 237, 28 USCA 344b), wherein it is provided that it shall be competent for the Supreme Court by certiorari to review a final judgment of the highest court of a State where any title, right, privilege or immunity is expressly set up or claimed by either party under the Constitution. In this cause the Petitioner has asserted the right under the Constitution of the United States to be entitled to the full possession and enjoyment of his certain property rights; that the Petitioner is not to be denied the equal protection of laws; that there should not be imposed upon the Petitioner the unreasonable and burdensome regulation and ruling of the New Jersey Supreme Court requiring Petitioner to serve a four months' clerkship in New Jersey after eleven years continuous, active practice as a Counsellor at Law in the State of New York, in good standing, contrary to a previous decision of said New Jersey Supreme Court in a case exactly identical with that of this Petitioner; further that Petitioner, under Rule 11 of the New Jersey Supreme Court (in effect February 14, 1931 (Appendix 2)), although he, while a voting resident of New Jersey, "matriculated in an approved law school", prior to the date of the promulgation of the rule, to wit September 16, 1925 (R. 23), is unjustly discriminated against as an Attorney from a foreign state, and in accordance with the last clause of said rule accordingly denied the equal protection of laws, although Petitioner is a native-born and practically life-long resident of the State of New Jersey and in the same category and class (except that he also happens to be a Counsellor at Law in the State of New York) as any candidate for admission to the Bar of the State of New Jersey who came within the protection of Rule 11 (prior to July 5, 1940); Petitioner lawfully comes within the provisions of the New Jersey Supreme Court rules existing prior to February

14, 1931, and in particular Rule 3 thereof which contains the words merely that a candidate for admission as an attorney "shall first submit himself to an examination as hereinafter provided and thereupon give satisfactory evidence of his learning in the law and his knowledge of the practice thereof as established in this State" (Appendix 1).

This the Petitioner has done and rests upon his examination answers (R. 8-22, 25-49) herein as full compliance with Rule 3. In such an instance Petitioner's examination papers need not be graded. A reading of same will show satisfactory compliance with Rule 3. In addition Petitioner asserts he unequivocally passed said examination and likewise rests on his said answers (R. 8-49).

The statements by the Chairman of the Respondent Board and also by one of the Supreme Court Justices, after the re-argument, are admissions that Petitioner has fully complied with Rule 3, above stated (Appendix 1).

2. The questions involved are substantial because Petitioner is being unduly imposed upon, deprived arbitrarily, illegally, and without due process of law of his certain property right in said examination, his papers unjustly rated, either inadvertently or otherwise, for reasons presently unknown to Petitioner, but apparently brought about by prejudice for reasons hereinafter stated. The State of New Jersey has an anomalous system for attorneys and counsellors at law. It is perhaps the only state in the Union wherein an applicant for admission to the Bar is not admitted by the Court itself. About forty of our forty-eight states admit qualified Counsellors of foreign states on motion. Four of the remaining eight states, exclusive of the District of Columbia, require spe-

cial examinations which may be waived. New Jersey is one of the four remaining states insisting upon examination of duly qualified Attorneys and Counsellors from foreign states. ("Rules for Admission to the Bar", West Publishing Company (1939); Martindale-Hubbell Law Digest (1940).) Petitioner states that he believes that no Justice of this United States Supreme Court has ever experienced the exactment of such a far in the minority, unreasonable requirement. As we have Uniform Laws dealing with Negotiable Instruments, Partnership, Warehouse Receipts, etc., there should also be a Uniform codified set of laws regarding the admission of attorney and counsellors in the various states of the Union including District of Columbia. This for the protection of the legal profession in general. In New Jersey the power of the Supreme Court in connection with the admission of Attorneys is as already stated, purely and solely recommendatory. It recommends the applicant, after examination, to the Governor of the State for commission as Attorney or Counsellor at Law, as the case may be, and the Governor commissions the successful applicant as Attorney or Counsellor by letters patent (*In re Branch*, 41 Vroom 537, 576, 70 N. J. L. 537, 576, 57 Atl. 435).

3. The New Jersey Supreme Court failed or refused to take cognizance of the fact that Petitioner comes within its rules existing prior to 1931. It over-ruled itself *In re Natelson* (R. 5, 6) and seeks to unreasonably exact a four-months clerkship from Petitioner, the service of which it held unnecessary in the *Natelson* case. It flagrantly discriminates against Petitioner. It characterized the Petitioner from the Bench (Mr. Justice Case) as a "law student". It overlooked the fact that the Petitioner has had practice experience in the New Jersey

Courts, in a proceeding entitled *Wall v. Board of Education (infra)*, wherein he practiced as an Attorney in that State, pro hac vice, both in its lower tribunals, its Supreme Court and its Court of Errors and Appeals (R. 3).

4. Petitioner knows no reason why his papers were unjustly marked and believes he is entitled to his rating on said examination. His examination papers are still ungraded. He has not been given a hearing on them by Respondent Board. Petitioner is a member, in good standing, of both the Bar of the United States Supreme Court and of the State of New York. During his eleven years of practice he has never once been censured or has had to appear before any bar or character committee. With no reflection on the Judiciary of the State of New Jersey nor upon any member of the respondent Board, and with due apology, the only reason Petitioner can advance for the unjust treatment he has received in this entire matter is the fact that he had the temerity to go to the assistance of his sister, a school teacher in the High Schools of Jersey City, who was illegally dismissed from her position in 1936. Your Petitioner claimed she had tenure of office. In this proceeding, *Margaret M. Wall v. Board of Education of the City of Jersey City in Hudson County* (119 N. J. L. 308, 196 Atl. 663), Petitioner obtained in the New Jersey Supreme Court an affirmance of an order by a lower appellate tribunal for re-instatement and payment of back salary to his sister. After delay by the Jersey City Board of Education of over fifteen months, and during her unemployment, Petitioner had its appeal to the New Jersey Court of Errors and Appeals dismissed in said proceeding for lack of prosecution, much to distress, dissatisfaction and chagrin of the local powers that be. Although lacking in direct proof Petitioner knows voices were

bruited about prior to the time the results of the April 1939 bar examination were announced that Petitioner would "repent and respond in the near future". Upon announcement of the successful candidates in June 1939, the reputed author of the above statement, is said to have smilingly stated "You didn't expect him (meaning Petitioner) to pass, did you?" Petitioner believes that his examination papers are used only as a pretext to prevent his admission as an attorney of the Bar of the State of New Jersey.

5. The Federal questions, some of which arose per se after the opinion of the New Jersey Supreme Court and the denial of Petitioner's Motion for re-argument of the matter (R. 57) were first raised by the Petitioner in the petition dated September 11, 1939 and again upon the Petition for re-argument before the said Court (R. 3-6, 50-66).

At all times Petitioner believed that the New Jersey Supreme Court would follow *In re Natelson* (R. 6) which it did not. Likewise in the subsequent proceedings the Petitioner raised these Federal questions on appeal to the New Jersey Court of Errors and Appeals,* the highest court in that State.

6. While there have been cases regarding admission of persons as Attorneys decided by the United States Supreme Court, it suffices to say Petitioner's cause is not

* Under New Jersey practice the only ground for appeal is that "the Court below erred". Hence, no detailed specifications of grounds appear in the notice (R. 59). That form of Notice preserves all the grounds of appeal previously urged. The appropriate sections of the brief filed with the Court of Errors and Appeals (Points II and IV) are annexed hereto (Appendix 5) and shows that the constitutional questions herein were not abandoned.

only unique but without precedent. It concerns Federal questions of substance, in a special set of facts and circumstances, not heretofore determined by this Court (Rule 38, Par. 5(a), Revised Rules of U. S. S. C., February 1939). Petitioner also states that in his opinion his within cause is eminently worthy of consideration by this Court.

Questions Presented.

1. May the New Jersey Supreme Court refuse to grant to this Petitioner the protection given under its certain Rule 11 (in effect February 14, 1931), Petitioner being a native born resident of the State of New Jersey and having "matriculated in an approved law school" prior to that date, namely, September 16, 1925?
2. May the New Jersey Supreme Court lawfully impose upon Petitioner the unreasonable requirement that Petitioner serve a four months' clerkship in the office of a Counsellor at Law in the State of New Jersey, although Petitioner has been actively engaged as a practicing Counsellor at Law in the State of New York for over eleven years, before Petitioner is granted permission to take another examination for admission as an attorney in the State of New Jersey?
3. Did not the New Jersey Supreme Court unjustly discriminate against Petitioner by failing to take cognizance of the fact that Petitioner comes within its rules existing prior to 1931, and further by failing to follow its decision *In re Natelson* (3 N. J. Misc. 549, 129 Atl. 183)? (R. 5.)
4. Did the New Jersey Supreme Court legally deny Petitioner the equal protection of laws by failing to ac-

cord him, as an Attorney from a foreign state, the same protection it does, or did prior to July 5, 1940, accord New Jersey candidates for admission to the Bar under Rule 11?

5. Did the New Jersey Supreme Court erroneously characterize Petitioner solely as an Attorney from a foreign state, when in fact Petitioner is a native born, practically life-long resident of the State of New Jersey?

6. Did the New Jersey Supreme Court unjustly, arbitrarily and as a matter of policy (Appendix 3) sustain the ruling of the respondent State Board of Bar Examiners in its decision that Petitioner failed to pass his bar examination in April 1939, although Petitioner's papers are ungraded and he has not received his rating to date?

7. Did the New Jersey Supreme Court err in holding Petitioner failed to pass the examination since under Rule 3 (Appendix 1) he had merely upon examination for Attorney "to give satisfactory evidence of his learning in the law and his knowledge of the practice thereof as established in the State of New Jersey"?

8. Were the decisions of the New Jersey Supreme Court arbitrary and determined more by expediency than by law, influenced by passion or prejudice or predicated on sound premises and valid reasoning?

9. Should not the New Jersey Supreme Court have permitted Petitioner, since it insisted upon an examination before Petitioner's admission to practice in that State, to take the New Jersey State examination for admission as Counsellor at Law (Rule 6(a), Appendix 1) so that Petitioner, upon passing said examination and

being thus admitted in the State of New Jersey, would be on a same footing and status commensurate with his standing as a Counsellor at Law in the State of New York?

10. Was not the New Jersey Supreme Court lacking in full power to summarily pass upon Petitioner's examination papers and deny him permission to take a re-examination until the requirements of a four months' clerkship have been met, when the power of the New Jersey Supreme Court in this connection is but recommendatory, the final decision resting with the Governor of the State of New Jersey?

Reasons Relied on for Allowance of Writ of Certiorari.

The reasons relied on for the allowance of this writ of certiorari are as follows:

1. By denying Petitioner the protection and benefit of its rules in existence prior to February 14, 1931 and by not following the *Natelson* decision, 3 N. J. Misc. 549, the New Jersey Supreme Court has denied to the Petitioner his right under Sec. 1, Amendment XIV of the United States Constitution to enjoy his certain property, and also denies him the equal protection of the laws in that the New Jersey Supreme Court does not grant "foreign attorneys" the same privileges or immunities granted to New Jersey candidates for admission to the bar.

2. The New Jersey Courts have thus denied to the Petitioner his right under Sec. 1, Article 1 of the New Jersey Constitution (Appendix 3) to enjoy, acquire

and protect property and also the right of the pursuit of happiness.

3. The decision of the New Jersey Supreme Court is contrary to law in that it is arbitrary, despotic and not guided, exercised or regulated by a sound and just judicial discretion. *Ex parte Secombe* 19 How. (U. S.) 9.

4. While it is somewhat immaterial, because of the peculiar system of admission of Attorneys in the State of New Jersey, that the New Jersey Court of Errors and Appeals did not take jurisdiction of the Petitioner's Appeal since it has intimated that no adverse result would have been attained, nevertheless, because of the flagrant injustice done this Petitioner, Petitioner's examination papers should be reviewed by the Highest Court in an instance where there is an adverse recommendation not based on sound premises and valid reasoning, particularly for the reason that in accordance with Sec. 1, Article VI, of the New Jersey Constitution (Appendix 3), the judicial power of the State of New Jersey is vested in the Court of Errors and Appeals "in the last resort in all causes". *In re Cooper*, 22 N. Y. 67; *In re Salot*, 45 P. (2d) 203.

5. Since the New Jersey Supreme Court has characterized Petitioner "as an attorney from a foreign state", it places Petitioner in the same category as a citizen of the State of New York. Accordingly the Court in this respect has denied to the Petitioner his right to be entitled to all privileges and immunities of citizens in the several States under Sec. 2, Par. 1 of Article IV of the United States Constitution.

6. The decision of the highest court of a State, or the highest court therein having jurisdiction, is review-

able by the United States Supreme Court in an instance where a question is raised by a conflicting decision of the said Court.

Randall v. Brigham, 7 Wall. (74 U. S.) 523, 541;
Selling v. Radford, 243 U. S. 46, 51, 52.

7. Petitioner concedes, following *Keeley v. Evans*, 271 Fed. 520, that the right to practice law in a sister state is not one of the privileges and immunities granted citizens of the different states under Sec. 2, Par. 1 of Article IV and under Sec. 1, Amendment XIV of the United States Constitution, but Petitioner states that, having submitted to an examination and having satisfied all the New Jersey requirements, he is being unjustly deprived of his certain property right in his said 1939 Bar examination without due process of law, is being denied the equal protection of laws in the State of New Jersey in the sense that he is not accorded these privileges and immunities because of discrimination against him as an attorney from a foreign state.

8. Petitioner's within case is unprecedented, and in all previous decisions in both the United States Supreme Court and other Federal Courts, dealing with the right of Attorneys and Counsellors to practice law in various states, Petitioner finds no instance where any of the appellants were members of the Bar of the United States Supreme Court and had been unjustly denied admission in a sister state under the facts and circumstances surrounding the present predicament of this Petitioner.

9. That in the event Petitioner is not given relief by the United States Supreme Court, he has no further recourse and will never be permitted to become either an Attorney or Counsellor at law of the New Jersey Bar.

That all prior petitions, as well as the within Petition, have undoubtedly prejudiced the respondent New Jersey State Board of Bar Examiners, the New Jersey Supreme Court, and the New Jersey Court of Errors and Appeals. That even if Petitioner did serve a four months' clerkship, which under existing circumstances is impossible since it for one reason, among others, would require the petitioner to give up for a four month period his practice in the State of New York, upon which Petitioner and his family are dependent for support, there is considerable doubt, for reasons hereintofore set forth, that re-examination of the Petitioner would prove satisfactory to the respondent Board or its parent Tribunal.

10. The Court has decided aforesaid Federal questions of substance not theretofore determined by the United States Supreme Court and in a way probably not in accord with applicable decisions of this Honorable Court.

11. The case is of peculiar gravity and of both special and general importance. Basic constitutional rights in New Jersey for the last decade have been continuously violated and suspended with impunity; and this, in a State in which an individual, as a one man power, has publicly proclaimed himself as "The Law".

WHEREFORE, because of the importance of the questions involved and for the reasons herein set forth your Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court directed to the Supreme Court of the State of New Jersey, to which the matter was remitted by New Jersey Court of Errors and Appeals (R. 61-62), commanding said Court to secure and send to this Court on a day certain to be

therein designated, a full and complete transcript of the record and proceedings of the Court in the case of your Petitioner which was therein entitled in the matter of Petition of William G. Wall, for a review and remarking of his examination papers of April 1939 Bar Examination and in the alternative to compel the Clerk of the Supreme Court to add his name to the list of those entitled to take the Bar Examination October 19, 20, 1939, William G. Wall, Appellant, State Board of Bar Examiners, Respondent, No. 10030, No. 418 October 1939 Term New Jersey Supreme Court, and No. 41 February 1940 Term of New Jersey Court of Errors and Appeals to the end that said cause may be reviewed and determined by this Court as provided by Section 237 of the Judicial Code as amended by the Act of February 13, 1925, and the Rules of this Court and that your Petitioner may have such other and further relief or remedy in the premises as this Court may deem appropriate and in conformity with the provisions of said Code, and the Rules of this Court and that the judgment of the Supreme Court of New Jersey and of the New Jersey Court of Errors and Appeals be reversed.

WILLIAM G. WALL,
Attorney in pro. per.,
Member of the Bar of the
United States Supreme Court.

